

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 45-003-13-1-5-00146-16
Petitioner: James Nowacki
Respondent: Lake County Assessor
Parcel: 45-07-13-483-011.000-003
Assessment Year: 2013

The Indiana Board of Tax Review (“Board”) issues this determination, finding and concluding as follows:

Procedural History

1. Petitioner initiated a 2013 appeal with the Lake County Property Tax Assessment Board of Appeals (“PTABOA”). The PTABOA issued notice of its final determination on November 30, 2015. On January 20, 2016, Petitioner filed a Form 131 petition with the Board.
2. Petitioner elected to have the appeal heard under the Board’s small claims procedures. Respondent did not elect to have the appeal removed from those procedures.
3. Ellen Yuhan, the Administrative Law Judge (“ALJ”) appointed by the Board, held the administrative hearing on March 19, 2018. Neither the ALJ nor the Board inspected the property.
4. James Nowacki, Petitioner, was sworn and testified. Robert Metz and Terrance Dourousseau, Lake County Appeal Officers, were sworn as witnesses for Respondent.

Facts

5. The subject property is a vacant residential lot located at 4714 W. 29th Place (approx.) in Gary.
6. For 2013, the assessed value was \$2,200.
7. Petitioner requested an assessed value of \$900.

Record

8. The official record contains the following:

- a. A digital recording of the hearing
- b. Exhibits:

Petitioner Exhibit 1:	GIS map,
Petitioner Exhibit 2:	Property record card (“PRC”),
Respondent Exhibit 1:	PRC,
Board Exhibit A:	Form 131 petition and attachments,
Board Exhibit B:	Notice of hearing,
Board Exhibit C:	Hearing sign-in sheet,

- c. These Findings and Conclusions.

Burden

- 9. Generally, a taxpayer seeking review of an assessing official’s determination has the burden of proving that a property’s assessment is wrong and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Assessor*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm’rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). A burden-shifting statute creates two exceptions to that rule.
- 10. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).
- 11. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under Ind. Code § 6-1.1-15,” except where the property was valued using the income capitalization approach in the appeal. Under subsection (d), “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d).
- 12. These provisions may not apply if there was a change in improvements, zoning, or use. Ind. Code § 6-1.1-15-17.2(c).

13. The assessed value was \$2,200 for 2012 and 2013. Petitioner, therefore, has the burden of proof.

Summary of Parties' Contentions

14. Petitioner's case:
- a. Petitioner offered a PRC and a GIS map of the subject property. He contends that, with the exception of an industrial operation across the street, there is no activity in the area. There is no residential activity nor has there been since the area was subdivided. He contends that there might be some value in combining the lots into a larger parcel. *Nowacki testimony; Pet'r Ex. 1.*
 - b. Petitioner acquired the property at auction for \$48. He contends he was the only person who showed interest in it. He also contends that during the PTABOA meeting, the assessor stated that the market dictates the price of the property. As such, he claims the market for the property should be \$50 and there has been no other activity that would reflect a higher value. *Nowacki testimony.*
 - c. Petitioner contends a willing buyer and a willing seller would come to an agreement of \$900 and that there is no market for the property at the assessed value. Consequently, he requests the Board value the property at \$900. *Nowacki testimony.*
15. Respondent's case:
- d. Respondent contends there is no evidence of when the fly-over photograph for the GIS map was taken. He claims that a fly-over date in 2014 would be more relevant than, say, a date in 2008. *Metz testimony.*
 - e. Respondent contends Petitioner has failed to present any probative evidence to support his value of \$900. *Durousseau testimony.*

ANALYSIS

16. Petitioner failed to make a prima facie case for a reduction in the assessed value. The Board reached this decision for the following reasons:
- a. Indiana assesses real property based on its true tax value, which the Department of Local Government Finance ("DLGF") has defined as the property's market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). To show a property's market value-in-use, a party may offer evidence that is consistent with the DLGF's definition of true tax value. A market value-in-use appraisal prepared according to the Uniform Standards of Professional Appraisal Practice ("USPAP") will often be probative. *Kooshtard Property VI v. White River Township Assessor*, 836 N.E.2d 501, 506 (Ind. Tax Ct. 2005). Parties may also offer evidence of actual construction costs, sales

information for the property under appeal, sale or assessment information for comparable properties, and any other information compiled according to generally accepted appraisal principles. *See Id.*; *see also*, I.C. § 6-1.1-15-18 (allowing parties to offer evidence of comparable properties' assessments to determine an appealed property's market value-in-use).

- b. Regardless of the method used to prove a property's true tax value, a party must explain how its evidence relates to the subject property's market value-in-use as of the relevant valuation date. *O'Donnell v. Dep't of Local Gov't Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Assessor*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). The valuation date for the 2013 assessment date was March 1, 2013. Ind. Code § 6-1.1-2-1.5.
- c. Petitioner purchased the property for \$48. However, he did not request the property be assessed for the purchase price. He contends the property should be assessed at \$900 but he presented no evidence to support that value. Statements that are unsupported by probative evidence are conclusory and of no value to the Board in making its determination. *Whitley Products, Inc. v. State Bd. of Tax Comm'rs*, 704 N.E.2d 1113, 1118 (Ind. Tax Ct. 1998).
- d. Petitioner failed to make a prima facie case for reducing the assessment. Where a petitioner has not supported its claim with probative evidence, the respondent's duty to support the assessment with substantial evidence is not triggered. *Lacy Diversified Indus. v. Dep't of Local Gov't Fin.*, 799 N.E.2d 1215, 1221-1222 (Ind. Tax Ct. 2003).

CONCLUSION

- 17. Petitioner failed to establish a prima facie case that the assessed value was incorrect. Consequently, the Board finds for Respondent.

FINAL DETERMINATION

In accordance with the above findings of fact and conclusions of law, the Board determines the assessed value should not be changed.

ISSUED: June 13, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

James Nowacki
4714 W. 29th Place
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- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days after the date of this notice. The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.